

§ 2570.49

(b) A FEDERAL REGISTER notice granting an exemption will summarize the transaction or transactions for which exemptive relief has been granted and will specify the conditions under which such exemptive relief is available.

§ 2570.49 Limits on the effect of exemptions.

(a) An exemption does not take effect or protect parties in interest from liability with respect to the exemption transaction unless the material facts and representations contained in the application and in any materials and documents submitted in support of the application were true and complete.

(b) An exemption is effective only for the period of time specified and only under the conditions set forth in the exemption.

(c) Only the specific parties to whom an exemption grants relief may rely on the exemption. If the notice granting an exemption does not limit exemptive relief to specific parties, all parties to the exemption transaction may rely on the exemption.

§ 2570.50 Revocation or modification of exemptions.

(a) If, after an exemption takes effect, changes in circumstances, including changes in law or policy, occur which call into question the continuing validity of the Department's original conclusions concerning the exemption, the Department may take steps to revoke or modify the exemption.

(b) Before revoking or modifying an exemption, the Department will publish a notice of its proposed action in the FEDERAL REGISTER and provide interested persons with an opportunity to comment on the proposed revocation or modification. In addition, the Department will give the applicant at least 30 days notice in writing of the proposed revocation or modification and the reasons therefor and will provide the applicant with the opportunity to comment on the revocation or modification.

(c) Ordinarily the revocation or modification of an exemption will have prospective effect only.

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§ 2570.51 Public inspection and copies.

(a) The administrative record of each exemption application will be open to public inspection and copying at the Public Disclosure Branch, EBSA, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

(b) Upon request, the staff of the Public Disclosure Branch will furnish photocopies of an administrative record, or any specified portion of that record, for a specified charge per page.

§ 2570.52 Effective date.

This regulation is effective with respect to all applications for exemptions filed with the Department under section 408(a) of ERISA, section 4975(c)(2) of the Code, or 5 U.S.C. 8477(c)(3) at any time on or after September 10, 1990. Applications for exemptions under section 408(a) of ERISA and/or section 4975 of the Code filed before September 10, 1990, are governed by ERISA Procedure 75-1. Applications for exemption under 5 U.S.C. 8477(c)(3) filed before September 10, 1990, but after December 29, 1988 are governed by part 2585 of chapter XXV of title 29 of the Code of Federal Regulations, (title 29 CFR part 2585 as revised July 1, 1990). Applications under 5 U.S.C. 8477(c)(3) filed before December 29, 1988 are governed by ERISA Procedure 75-1.

Subpart C—Procedures for the Assessment of Civil Penalties Under ERISA Section 502(c)(2)

SOURCE: 54 FR 26897, June 26, 1989, unless otherwise noted.

§ 2570.60 Scope of rules.

The rules of practice set forth in this subpart are applicable to "502(c)(2) civil penalty proceedings" (as defined in § 2570.61(n) of this subpart) under section 502(c)(2) of the Employee Retirement Income Security Act of 1974. The rules of procedure for administrative hearings published by the Department's Office of Law Judges at part 18 of this title will apply to matters arising under ERISA section 502(c)(2) except as modified by this section. These proceedings shall be conducted as expeditiously as possible, and the parties

shall make every effort to avoid delay at each stage of the proceedings.

§ 2570.61 Definitions.

For 502(c)(2) civil penalty proceedings, this section shall apply in lieu of the definitions in § 18.2 of this title:

(a) *Adjudicatory proceeding* means a judicial-type proceeding before an administrative law judge leading to the formulation of a final order;

(b) *Administrative law judge* means an administrative law judge appointed pursuant to the provisions of 5 U.S.C. 3105;

(c) *Answer* means a written statement that is supported by reference to specific circumstances or facts surrounding the notice of determination issued pursuant to § 2560.502c-2(g) of this chapter.

(d) *Commencement of proceeding* is the filing of an answer by the respondent;

(e) *Consent agreement* means any written document containing a specified proposed remedy or other relief acceptable to the Department and consenting parties;

(f) *ERISA* means the Employee Retirement Income Security Act of 1974, as amended;

(g) *Final Order* means the final decision or action of the Department of Labor concerning the assessment of a civil penalty under ERISA section 502(c)(2) against a particular party. Such final order may result from a decision of an administrative law judge or the Secretary, the failure of a party to file a statement of reasonable cause described in § 2560.502c-2(e) within the prescribed time limits, or the failure of a party to invoke the procedures for hearings or appeals under this title within the prescribed time limits. Such a final order shall constitute final agency action within the meaning of 5 U.S.C. 704;

(h) *Hearing* means that part of a proceeding which involves the submission of evidence, either by oral presentation or written submission, to the administrative law judge;

(i) *Order* means the whole or any part of a final procedural or substantive disposition of a matter under ERISA section 502(c)(2);

(j) *Party* includes a person or agency named or admitted as a party to a proceeding;

(k) *Person* includes an individual, partnership, corporation, employee benefit plan, association, exchange or other entity or organization;

(l) *Petition* means a written request, made by a person or party, for some affirmative action;

(m) *Pleading* means the notice as defined in § 2560.502c-2(g), the answer to the notice, any supplement or amendment thereto, and any reply that may be permitted to any answer, supplement or amendment;

(n) *502(c)(2) civil penalty proceeding* means an adjudicatory proceeding relating to the assessment of a civil penalty provided for in section 502(c)(2) of ERISA;

(o) *Respondent* means the party against whom the Department is seeking to assess a civil sanction under ERISA section 502(c)(2);

(p) *Secretary* means the Secretary of Labor and includes, pursuant to any delegation of authority by the Secretary, any assistant secretary (including the Assistant Secretary for Employee Benefits Security), administrator, commissioner, appellate body, board, or other official; and

(q) *Solicitor* means the Solicitor of Labor or his or her delegate.

[54 FR 26897, June 26, 1989, as amended at 68 FR 3737, Jan. 24, 2003]

§ 2570.62 Service: Copies of documents and pleadings.

For 502(c)(2) penalty proceedings, this section shall apply in lieu of § 18.3 of this title.

(a) *General.* Copies of all documents shall be served on all parties of record. All documents should clearly designate the docket number, if any, and short title of all matters. All documents to be filed shall be delivered or mailed to the Chief Docket Clerk, Office of Administrative Law Judges, 800 K Street, NW., Suite 400, Washington, DC 20001-8002, or to the OALJ Regional Office to which the proceeding may have been transferred for hearing. Each document filed shall be clear and legible.

(b) *By parties.* All motions petitions, pleadings, briefs, or other documents